**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**SEVENTH REGION**

**MINACT, INC.**

**Employer**

**and**

**Case GR-7-RD-3462**

**DEBORAH J. MCCREARY, An Individual**

**Petitioner**

**and**

**GENERAL TEAMSTERS UNION LOCAL NO. 406, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO**

**Union**

**APPEARANCES:**

Armin J. Moeller, Jr., Esq. of Jackson, Mississippi for the Employer.
Deborah J. McCreary of Grand Rapids, Michigan, pro se.
Fil Iorio, Esq. of Grand Rapids, Michigan for the Union.

## DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding[1], the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[1] The Union filed a brief, which was carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

**Overview**

The Petitioner seeks a decertification election in a unit of approximately 46 full-time employees employed by the Employer at its facility located at 110 Hall Street SE, Grand Rapids, Michigan. The parties agree that the following classifications of employees fall within the unit description: all full-time Residential Advisers I, Residential Advisers II, Day Residential Advisers, Recreation Specialists, Counselors, CPP Coordinators, Academic Instructors, CPP Instructors, Accountability/Scheduling Specialists, CMI/Test Administrators, Drivers Education Instructors, CEP Coordinators, BIT Instructors, First Cooks, Cooks, Utility Workers, Custodians, Maintenance Specialists, Driver/Utility Workers, and Property Inventory Specialists; but excluding all other employees, and guards and supervisors as defined in the Act.

The Union maintains that there is a contract bar to the holding of an election, and that the petition should be dismissed. The Employer takes no position on that issue. The Petitioner also takes no position, but wants an election. For the reasons set forth below, I find that there is no contract bar because no signed contract existed prior to the filing of the decertification petition.

**Negotiations**

The Employer operates a job corps center in Grand Rapids pursuant to a contract with the Office of Job Corps, a division of the United States Department of Labor. The Union and Employer have had a collective bargaining relationship since 1998. The most recent collective bargaining agreement between the parties was effective from September 1, 2000 through September 4, 2003. On February 4, 2004, the parties agreed to extend that agreement through September 5, 2004.

On July 19, 2004, the Union contacted the Employer and requested contract negotiations. The parties met on August 25, August 26, September 2, and September 3. During the negotiations, the Union presented the Employer with a list of proposals. As the parties negotiated, the Union kept track of the proposals

the parties tentatively agreed upon by marking its copy of the proposal sheet. The Employer did not sign or initial the proposal sheet.

On September 3, the Employer arrived at negotiations with a document incorporating into the prior contract all of the tentative agreements reached in the first three days of negotiations. The Union and Employer negotiated further and reached agreement on several more issues. The Employer then presented the Union with its final offer on wages and health insurance, issues which had not been agreed upon. The Union did not accept the Employer's final offer on those issues, but agreed to take the entire offer to the membership for a ratification vote.

The Employer, using a computer in the Union's office, produced a draft agreement incorporating all of the tentative agreements reached between the parties and the Employer's final offer on wages and health insurance. The draft's cover page stated that it was an agreement between the Employer and the Union, effective from September 5, 2004 through September 2, 2006. It contained clauses covering wages, health insurance, holidays, vacation and other terms and conditions of employment. The Union and Employer reviewed the draft and agreed that it was correct and complete, aside from minor problems with the indexing. Neither party initialed or signed the draft.

On September 4, the Union held a ratification vote. It presented the Employer's final offer to the membership, and the membership voted to accept it. On September 7, the Union contacted the Employer by telephone and orally communicated that the contract was accepted. Neither party mailed or exchanged any written correspondence referencing the draft or the agreement between the parties until September 27, when the Union sent the Employer a letter asking for a final draft of the contract.

On September 10, the Petitioner filed the instant petition.

**Analysis**

The Union contends that there is a contract bar that prevents the filing of the instant petition. The Board's contract bar doctrine is intended to balance the statutory policies of stabilizing labor relations and facilitating employees' exercise of free choice in the selection or change of a bargaining representative. ***Direct Press Modern Litho, Inc.,*** 328 NLRB 860 (1999), citing ***Appalachian Shale Products Co.,*** 121 NLRB 1160 (1958). The doctrine is Board created, not imposed by the Act or judicial case law, and the Board has considerable discretion to formulate and apply its rules. ***Bob's Big Boy Family Restaurants v. NLRB***, 625 F.2d 850, 851, 853-4 (9th Cir. 1980).

In determining whether an agreement may serve as a bar to an election, the Board examines whether the contract is written, contains substantial terms and conditions of employment, and is signed by all parties prior to the petition it would bar. ***Appalachian Shale Products Co.***, 121 NLRB 1160 (1958); ***Georgia Purchasing, Inc.***, 230 NLRB 1174 (1977); ***Seton Medical Center***, 317 NLRB 87 (1995). A formal document is not necessary to establish that an agreement existed prior to the filing of the petition. Informal documents or documents containing substantial terms and conditions of employment are sufficient if signed. ***Appalachian Shale***, supra at 1162; ***Seton Medical Center***, supra. However, an unsigned contract will not bar a petition even if all parties consider the matter concluded and put into effect some or all of its provisions. ***Appalachian Shale***, supra; ***Seton Medical Center***, supra at 87-88; ***DePaul Adult Care Communities***, 325 NLRB 681 (1998).

Here, it is undisputed that no signed contract exists. The Union contends that the Employer's written final offer, together with the ratification by the membership and the Union's acceptance by telephone, establishes that a contract existed prior to the September 10 petition.[2] The Employer's offer was in writing and contained substantial terms and conditions of employment. However, the Employer did not sign it or produce any written correspondence referencing the offer or embodying its terms. The Union's acceptance of the offer was by telephone, not in writing, and was not acknowledged by the Employer in writing. There are no signed documents from either side showing the existence of a contract prior to the filing of the petition. Without such signed documents, the existence of an agreement can only be established by the type of oral testimony the Board eschewed in ***Appalachian Shale***, supra; ***Seton Medical Center***, supra at 88.

The Union argues that the method used to produce the final offer demonstrates an agreement between the parties sufficient to establish a contract bar.[3] The Employer produced the offer on a computer in the Union office and the Union and the Employer reviewed the document together and agreed that the terms were a fair representation of the tentative agreements reached in negotiations. While this evidence is relevant to show whether the parties had a

[2] The Union also made reference to the proposal sheet that the Union marked to indicate tentative agreements reached by the parties during negotiations and a draft contract produced by the Employer prior to incorporating its final offer on wages and health insurance. The Employer did not sign or initial either of these documents. In addition, these documents reflected only the tentative agreements reached during the first three days of negotiations and did not encompass the overall terms of the contract. Thus, even if signed or initialed, the proposal sheet and draft contract would have been insufficient to establish a contract bar. ***Seton Medical Center***, supra at 88.

[3] The Union relies in part on the Board's decision in ***Swift & Company***, 213 NLRB 49 (1974), where it claims that the "Board did not focus on the signatures" in applying contract bar. The issue in *Swift* was different from the one at issue here. In that case, there was no dispute that the parties had a signed agreement. The issue was whether the employer was entitled to rely on the union's representation that a condition precedent to the contract, a ratification vote, had taken place.

meeting of the minds with regard to the offer the Union accepted, it does not cure the absence of a signed writing containing the terms of the overall agreement.

Thus, I find that no contract bar exists here because there is no signed document evidencing the finalization of the parties' negotiation process and memorializing the overall terms of their collective bargaining agreement. ***Seton Medical Center***, supra at 87.

5. Based on the foregoing reasons, and on the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time Residential Advisers I, Residential Advisers II, Day Residential Advisers, Recreation Specialists, Counselors, CPP Coordinators, Academic Instructors, CPP Instructors, Accountability/Scheduling Specialists, CMI/Test Administrators, Drivers Education Instructors, CEP Coordinators, BIT Instructors, First Cooks, Cooks, Utility Workers, Custodians, Maintenance Specialists, Driver/Utility Workers, and Property Inventory Specialists[4]; but excluding all other employees, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 14th day of October 2004.

"/s/[Stephen M. Glasser]."

(SEAL) /s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

[4] At the outset of the hearing, the Union declined to stipulate to the unit only because it wanted to confirm that the positions of Residential Living Clerk Typists, Orientation Coordinators, Clerical Instructors, and Academics/Vocations Clerk Typists, which were included in the original certification, and most recent contract, were now defunct. The Union was not again asked its position on those classifications. Accordingly, since the Employer and Petitioner assert that those four classifications no longer exist and the Union did not produce evidence to the contrary, those classifications are not included in the appropriate unit. However, if any employees are still employed in those classifications and they appear at the election to vote, they may vote subject to challenge by any party.

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**GENERAL TEAMSTERS UNION LOCAL NO. 406, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO**

## LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Company***, 394 U.S. 759 (1969); ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **3** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **October 21, 2004.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570.** This request must be received by the Board in Washington by **October 28, 2004.**

## POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.